

NOAA
NESDIS

Remote Sensing Regulatory Reform

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NOAA General Counsel
ACCRES Meeting
June 23, 2020



Agenda



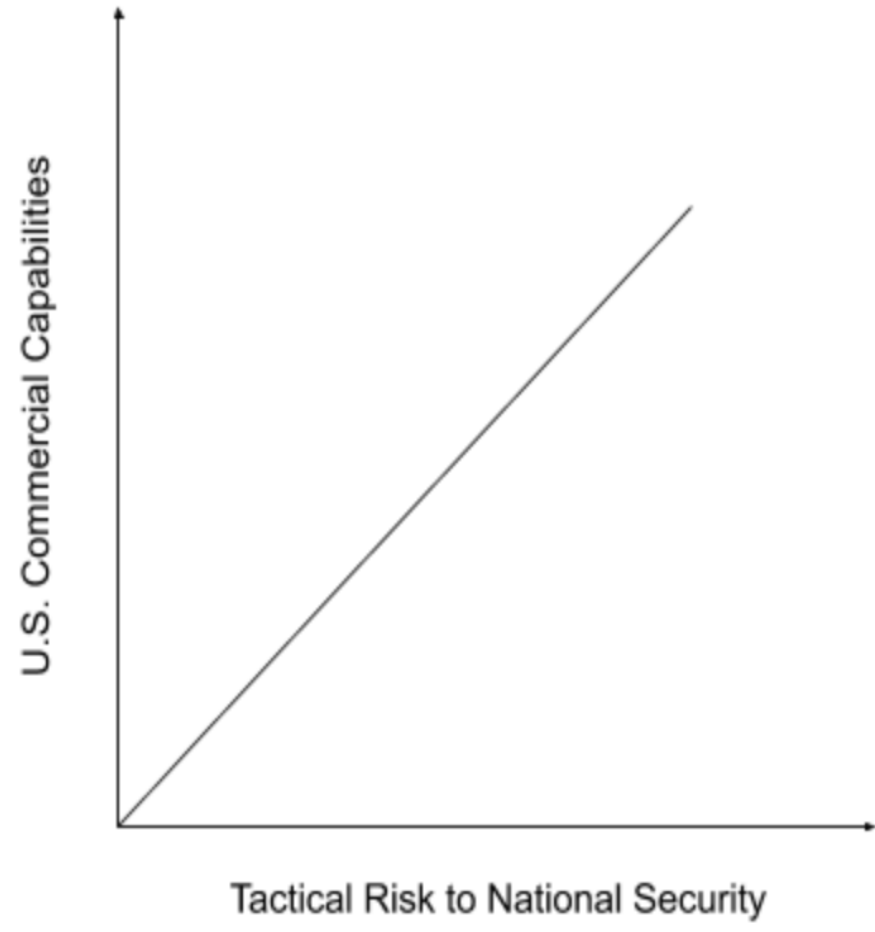
- Paradigm Shift
- Final Rule Details





Paradigm Shift

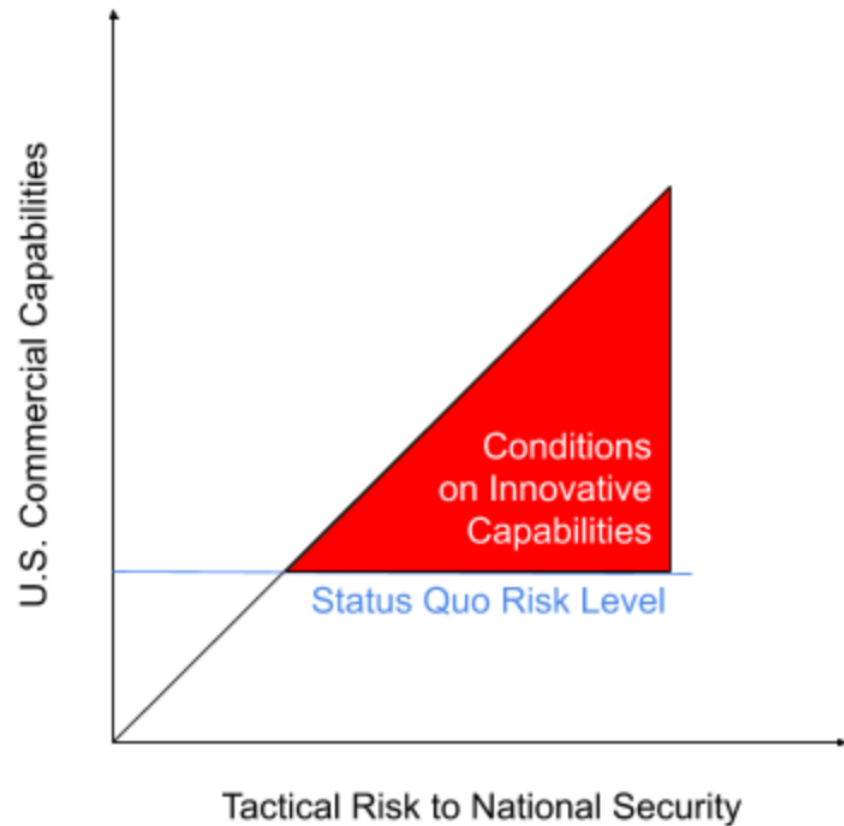
Traditional View





Paradigm Shift

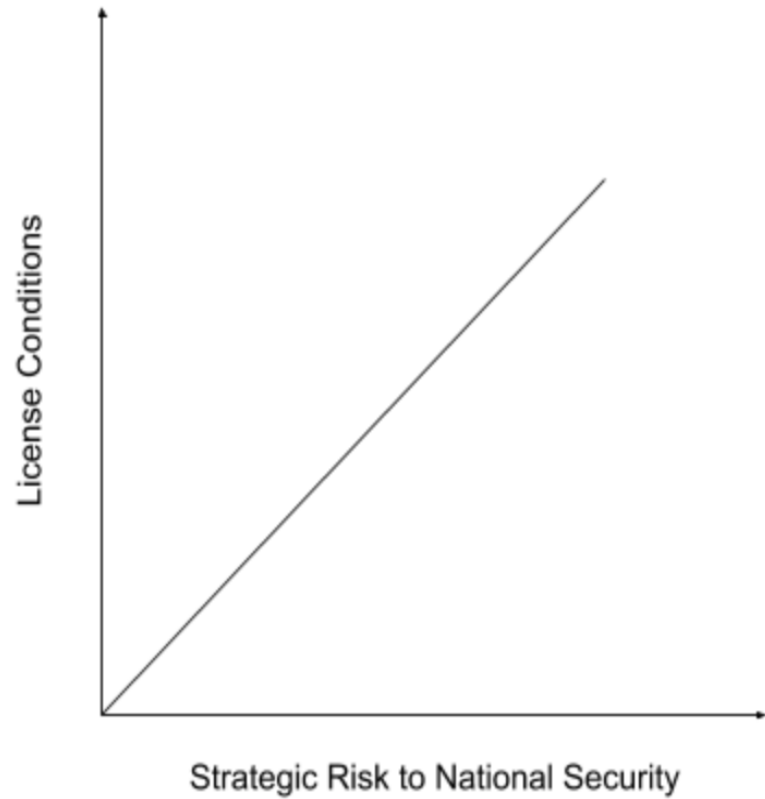
Pitfalls of Traditional View





Paradigm Shift

Pitfalls of Traditional View





Paradigm Shift

Final Rule Approach

- Focus only on what is controllable
- Allow U.S. systems to lead global market
- Shift risk burden to U.S. Government
- Protect national interests by attracting businesses
- Regulations should be transparent, proactive, and adaptable to global market commercial capability
- Use hyper-tailored shutter control for emergencies



Final Rule Details

Final Rule Logistics

- Published May 20, 2020
- Comments accepted through June 19, 2020
- Effective July 20, 2020
- New licenses sent to licensees July 20, 2020



Final Rule Details

Subpart A—General

- Sec. 960.1 Purpose.
- 960.2 Jurisdiction.
- 960.3 Applicability to existing licenses.
- 960.4 Definitions.

Subpart B—License Application Submission and Categorization

- 960.5 Application submission.
- 960.6 Application categorization.

Subpart C—License Application Review and License Conditions

- 960.7 License grant or denial.
- 960.8 Standard license conditions for all tiers.
- 960.9 Additional standard license conditions for Tier 2 systems.
- 960.10 Additional standard and temporary license conditions for Tier 3 systems.
- 960.11 No additional conditions.
- 960.12 Applicant-requested waiver before license issuance.
- 960.13 Licensee-requested modification after license issuance.
- 960.14 Routine compliance and monitoring.
- 960.15 Term of license.

Subpart D—Prohibitions and Enforcement

- 960.16 Prohibitions.
- 960.17 Investigations and enforcement.

Subpart E—Appeals Regarding Licensing Decisions

- 960.18 Grounds for adjudication by the Secretary.
- 960.19 Administrative appeal procedures.

Appendices

- Appendix A to Part 960—Application Information Required
- Appendix B to Part 960—Application Submission Instructions
- Appendix C to Part 960—License Template
- Appendix D to Part 960—Memorandum of Understanding



Final Rule Details

License Tiers

- **Tier 1:** system capable of producing data substantially the same as data available from sources outside Commerce's jurisdiction (such as foreign sources)
- **Tier 2:** system capable of producing data substantially the same as data available only from Commerce licensees
- **Tier 3:** system capable of producing data substantially the same as no other available data



Final Rule Details

Tier 1 Conditions

- Statutory conditions (such as sensed-state principle)
- No other conditions
 - No shutter control
 - No retroactive conditions



Final Rule Details

Tier 2 Conditions

- Statutory conditions
- Shutter control
- Minimal non-Earth imaging condition
- No retroactive conditions



Final Rule Details

Tier 3 Conditions

- Statutory conditions (such as sensed-state principle)
- Shutter control
- Minimal non-Earth imaging condition
- Possibility of temporary, custom conditions
 - Developed in consultation with Defense, IC, State
 - Must meet First Amendment requirements
 - Temporary (1 year, extendable twice)
- Focus on U.S.G. mitigation
- No retroactive conditions



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